

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE OR CHANGE

The agency identified below in box 1 provides notice of proposed rule or change pursuant to Utah Code Subsections 63-46a-4(2) and (4). Please address questions regarding information on this notice to the agency. The full text of all rule filings is published in the *Utah State Bulletin* unless excluded because of space constraints. The full text of all rule filings may also be inspected at the Division of Administrative Rules.

State of Utah Division of Administrative Rules (DAR) 4120 State Office Building; 450 North Main PO Box 141007 Salt Lake City, UT 84114-1007 Phone: (801) 538-3218, FAX: (801) 538-1773 State E-mail: asdomain.asitmain.rules	DAR file no.: <hr/> Utah Admin. Code ref. (R no.): R156-59 <hr/> Date filed: _____ <hr/> Time filed: _____ <hr/> Received by: _____
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1. Department:	Commerce
Agency:	Occupational and Professional Licensing
Room no., building:	Heber M. Wells Building - 4th Floor
Street address:	160 East 300 South
Mailing address:	PO Box 146741
City, state ZIP:	Salt Lake City UT 84114-6741
Contact person:	Dan S. Jones
Telephone:	(801) 530-6720
FAX:	(801) 530-6511
Internet E-mail:	dsjones@utah.gov

(Interested persons may inspect this filing at the above address or at DAR between 8:00 a.m. and 5:00 p.m. on business days.)

2. Title of rule or section (catchline):
Professional Employer Organization Act Rules

3. Type of notice:

Proposed rules	_____ New	_____ X Amendment	_____ Repeal
	Repeal and reenact		

Other rule types _____ Change in proposed rule _____ (changes original proposed rule file no.: _____)

4. Purpose of the rule or reason for the change:
The Division needs to make several deletions in the rule resulting from changes made in the professional employer organization (PEO) statute (Title 58, Chapter 59) during the 2002 legislative session which relaxed the requirements for licensure (see HB 279). The Division also needs to update the statute citations as a result of the legislative changes.

5. This rule or change is a response to comments by the Administrative Rules Review Committee. Ye X No
 s _____

6. Summary of the rule or change:

The following sections were amended by deleting provisions that no longer have a basis in the statute governing professional employer organizations and by updating various statute citations throughout the rule: 102-Definitions, 302a-Qualifications for Licensure, 302b-Change in Ownership or Change in Officers, Directors, Responsible Managers or Other Persons Who Have Controlling Interest, 306-Financial Filing Requirements, 502-Process for Obtaining Prior Written Approval for Sales, Transfers or Entering Into Contracts which Commits the Licensee to Make Future Payments.

7. Aggregate anticipated cost or savings to:

State budget: The Division will incur minimal costs, less than \$100, to reprint this rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

Local government: Proposed amendments do not apply to local governments.

Other persons: The qualifications for licensure as a professional employer organization have been relaxed and accordingly there may be some savings to the PEO companies, but the Division is unable to determine any exact amount of savings to the licensed professional employer organizations as it could vary greatly between each company.

8. Compliance costs for affected persons ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):

No compliance costs are associated with these proposed amendments for licensed professional employer organizations. The Division only anticipates savings to the PEO companies as identified above.

9. Comments by the department head on the fiscal impact the rule may have on businesses:

This rule change is required to bring the rule into compliance with statutory changes made in the last legislative session. Although the statutory change relaxed the licensure requirements and may result in savings to professional employer organizations, this rule should not result in any further fiscal impact to businesses. Ted Boyer, Executive Director.

10. This rule or change is authorized or mandated by state law, and implements or interprets the following state and federal laws.

State code or constitution citations (required): Section 58-59-101 and Subsections 58-1-106(1) and 58-1-202(1)

Federal citations (optional):

11. This rule or change adds or updates an incorporated reference (submit a copy to DAR):

Ye	X	No
s		

Reference title and date of issue or edition:

12. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the *Utah State Bulletin*. See Section 63-46a-5 and Rule R15-1 for more information.)

Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy): 07/31/2002

A public hearing (optional) will be held on (mm/dd/yyyy): 07/25/2002 at (time): 9:00 a.m.

at (place): 160 East 300 South, Conference Room 4B (4th Floor), Salt Lake City, Utah

13. This rule or change may become effective on (mm/dd/yyyy): 08/01/2002

14. Indexing information - keywords (maximum of four, in lower case):

licensing, professional employer organization

15. Indexing information - affected industries (two-digit SIC codes):

n/a

16. Attach a WordPerfect document containing the text of this rule or change (filename): R156-59.pro

To the agency: Information requested on this form is required by Sections 63-46a-4, 5, 6, and 10. Incomplete forms may be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*, and delaying the first possible effective date.

AGENCY AUTHORIZATION

Agency head or designee, and title:	J. Craig Jackson, Director	Date (mm/dd/yyyy):	05/09/2002
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R156. Commerce, Occupational and Professional Licensing.

R156-59. Professional Employer Organization Act Rules.

R156-59-102. [Definitions]Reserved.

~~[In addition to the definitions in Title 58, Chapters 1 and 59, as used in Title 58, Chapters 1 and 59 or these rules:~~

~~(1) "Certified audit", as used in Subsection 58-59-302(6), and "audited financial statement", as used in Subsection 58-59-306(2)(b)(i), means performing inquiry and analytical procedures which provide a basis for expressing assurance that there are no material modifications that should be made to the statements in order for them to be in conformity with the generally accepted accounting principles; and the issuance of a report on the financial statements stating that an audit was performed in accordance with the standards established by the American Institute of Certified Public Accountants.~~

~~(2) "Self-funded or partially self-funded insurance plan" as used in Subsection 58-59-302(7) means any plan of insurance or provision of an employee health benefits program where risk of loss is borne by the professional employer organization.~~

~~(3) "Certified public accountant" as used in Section 58-59-306 means a Utah licensed certified public accountant unless exempted under Subsection 58-26a-305 of the Certified Public Accountant Licensing Act.]~~

R156-59-302a. Qualifications for Licensure.

~~(1) [In accordance with Subsection 58-59-302(5), the Division will permit an independent certified public accountant to certify in a form prescribed by the Division that the applicant has complied with the requirements set forth in Subsections 58-59-302(3) and (4).~~

~~(2) [In accordance with Subsection 58-59-302([5]4), the Division shall require [an independent certified public accountant to provide the following evidence of financial responsibility:~~

~~(a) a certification in a form prescribed by the Division that the PEO has paid all federal, state, and local withholding taxes, unemployment taxes, FICA taxes, workers' compensation premiums, and employee benefit plan premiums; and~~

~~(b) [the PEO's audited financial statement for the year immediately preceding the date of the license application.~~

~~[In accordance with Subsection 58-59-302(7), the Division shall require:~~

~~(a) a licensed third party administrator to certify that the applicant is in compliance with the requirements set forth in Subsection 58-59-302(7)(b) and (d); and~~

~~(b) a qualified actuary who is a member in good standing of the American Academy of Actuaries to submit a statement of actuarial opinion certifying that the applicant is in compliance with the requirements set forth in Subsection 58-59-~~

302(7)(a).]

([4]2) In accordance with Subsection 58-59-302([9]6), responsible managers shall document the following education and experience requirements:

(a) an earned bachelors or post graduate degree in law, accounting, finance or business administration or other related educational program approved by the Division in consultation with the Board and has a minimum of two years of full time paid experience in law, accounting, finance, business administration, management, or other related education and experience approved by the Division in consultation with the Board; or

(b) graduation from high school or have a GED equivalent and have six years of full time paid experience in accounting, finance, business administration, management, or other related experience approved by the Division in consultation with the Board.

~~[(5) In accordance with Subsection 58-59-302(10), good moral character shall be established by evaluating the conduct of the officers, directors, responsible managers who have signatory authority over fiduciary funds or persons who have a controlling interest in the PEO.]~~

([6]3) In accordance with Subsections 58-59-501(5) and 58-59-502([3]1), each applicant for licensure as a PEO shall submit a form of the contract to be used between the PEO and the employee and submit a form of the contract to be used between the PEO and the client company to whom leased employees are provided.

(a) The contract forms shall contain:

(i) the name and address of the PEO as filed with the Division of Corporations and Commercial Code and the name and address under which the company does business;

(ii) disclosure that the employee is under contract for the purpose of being leased to a client company;

(iii) disclosure of the identity of the entity from whom the employee will receive compensation for work performed;

(iv) disclosure of the total compensation, including all employee benefits, to which the employee will be entitled;

(v) representation by the PEO that it will pay or cause to be paid when due all amounts to which the employee is entitled or which are to be paid to others, including government agencies and insurance companies; and

(vi) disclosure of any other matter which is material in the employment of the employee by the PEO or in the leasing of the employee to a client company.

(b) The contract forms specified in Subsection (a) shall be accompanied by a letter from legal counsel for the PEO expressing a legal opinion that the contract forms comply with the contract standards set forth in Title 58, Chapter 59, and this section.

**R156-59-302b. Change in Ownership or Change in Officers, Directors, Responsible Managers or Other Persons Who Have Controlling Interest[–
Reestablishment of Qualifications for Licensure].**

(1) In accordance with Subsections 58-59-302([8]5) and (6) and 58-59-502(2), any change in ownership or change in officers, directors, responsible managers who have signatory authority over fiduciary funds or other persons who have a controlling

interest in a licensed PEO shall require submission of a criminal background check satisfactory to the Division within 10 days after the change.

(2) In accordance with Subsection 58-59-302([9]5), responsible managers shall require submission of evidence in a form prescribed by the Division that the new responsible manager has the education and experience requirements set forth in Subsection R156-59-302a(4) within 10 days after the change.

~~[(3) In accordance with Subsection 58-59-302(10), any change in ownership or change in officers, directors, responsible managers who have signatory authority over fiduciary funds or other persons who have a controlling interest in a licensed PEO shall require submission of evidence in a form prescribed by the Division that the new owner, officer, director, responsible manager or other persons having a controlling interest in the PEO is of good moral character as defined in Subsection R156-59-302a(5) within 10 days after the change.]~~

R156-59-306. Financial Filing Requirements [Responsibility].

~~[(1)]~~In accordance with Subsection 58-59-306[(2)(a)](1), the quarterly reports prepared by an independent CPA shall be submitted in accordance with the following schedule:

- (a) March 31 for the quarter ending December 31;
- (b) June 30 for the quarter ending March 31;
- (c) September 30 for the quarter ending June 30; and
- (d) December 31 for the quarter ending September 30.

~~[(2) Beginning September 30, 2001, in accordance with Subsection 58-59-306(2)(b)(ii), if the PEO is self-funded or partially self-funded:~~

- ~~(a) a third party administrator shall certify annually that the PEO is in compliance with Subsection 58-59-302(7)(b) and (d); and~~
- ~~(b) a qualified actuary who is a member in good standing of the American Academy of Actuaries shall submit annually a statement of actuarial opinion certifying that the PEO is in compliance with the requirements set forth in Subsection 58-59-302(7)(a).]~~

R156-59-502. Process for Obtaining Prior Written Approval for Sales, Transfers or Entering Into Contracts which Commits the Licensee to Make Future Payments.

In accordance with Subsection 58-59-502([8]4), in order to obtain prior written approval from the Division for sales, transfers or entering into contracts which commits the licensee to make future payments, the PEO shall submit:

- (1) an application for licensure, if the event or events listed in Subsection 58-59-502([8]4) results in or would require the creation of a new business entity; or
- (2) ~~[an audited financial statement]~~ a verification prepared by an independent certified public accountant stating that upon completion of the event or events listed in Subsection 58-59-502([8]4):
- ~~(a) the PEO will remain financially responsible as set forth in Subsection 58-59-306(2)(b)(i);~~
- and
- ~~(b)~~ the PEO will have a minimum adjusted net worth of \$50,000 or 5% of the total adjusted liabilities, whichever is greater.

KEY: licensing, professional employer organization[*]

[September 18, 2000]

Notice of Continuation January 27, 1998

58-1-106(1)

58-1-202(1)

58-59-101